

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MARVIN FLEMINGS, # B-35975,

Plaintiff,

vs.

**C/O JENKINS, PAMELA MORGAN,
HODGES, DERWIN L. RYKER,
J. BROWN, MELODY J. FORD,
and FLORES SANTOS,**

Defendants.

Case No. 12-cv-1001-JPG

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter is before the Court for case management. Plaintiff, currently incarcerated at Hill Correctional Center, brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. His claims arose out of a July 13, 2007, attack on him by a cellmate, which took place while Plaintiff was confined at Lawrence Correctional Center.

On October 10, 2012 (Doc. 10), this Court denied Plaintiff's motion for leave to proceed in forma pauperis ("IFP"), and ordered him to pay the \$350 filing fee for this action in full. Plaintiff had accumulated three "strikes" for having prior cases dismissed for failure to state a claim upon which relief may be granted, and his complaint did not indicate that he was in imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g). Plaintiff's deadline for payment was October 31, 2012. Plaintiff did not tender payment, and instead filed a notice of appeal from the order denying IFP (Doc. 12).

Plaintiff was granted leave to appeal IFP (Doc. 19), and he was assessed an initial partial filing fee of \$8.69 (Doc. 22) with the balance of the \$455 appellate fee to be paid in installments.

When Plaintiff failed to pay the initial partial fee, the appellate court issued an order (Doc. 24), giving him until January 16, 2013, to tender the initial partial filing fee or show cause why his appeal should not be dismissed. Two more months passed without any payment from Plaintiff, so on March 6, 2013, the appeal (No. 12-3438) was dismissed (Doc. 26).

The dismissal of Plaintiff's appeal again vests jurisdiction over the matter in this Court. To date, Plaintiff still has made no payment toward either the \$455 appellate filing and docketing fee for Appeal No. 12-3428, or the \$350 district court filing fee for this action. Accordingly, payment shall be ordered below for the district court fee, and this case shall be dismissed. Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee remains due and payable regardless of later developments in the suit, such as dismissal or denial of leave to proceed IFP. *See* 28 U.S.C. § 1915(b)(1), (e)(2); *Lucien v. Jockisch*, 133 F.3d 464, 467-68 (7th Cir. 1998).

Filing Fee Payment

IT IS HEREBY ORDERED that the agency having custody of the Plaintiff shall remit the \$350.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$350.00 in his account, the agency must send an initial payment of 20% of the current balance or the average balance during the past six months, whichever amount is higher.

Thereafter, Plaintiff shall make monthly payments of 20% of the preceding month's income credited to Plaintiff's prison trust fund account until the \$350.00 filing fee is paid in full. The agency having custody of Plaintiff shall forward these payments from the Plaintiff's trust fund account to the Clerk of this Court each time the Plaintiff's account exceeds \$10.00, until the \$350.00 fee is paid. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois, P.O. Box 249, East St. Louis, Illinois 62202. The

Clerk is **DIRECTED** to mail a copy of this order to the Trust Fund Officer at Hill Correctional Center upon entry of this Order.

Disposition

For the reasons stated above, this action is **DISMISSED without prejudice** for non-payment of the filing fee. All pending motions are **DENIED AS MOOT**.

Plaintiff is **ADVISED** that this dismissal shall not count as one of his allotted “strikes” under the provisions of 28 U.S.C. § 1915(g).

The Clerk shall **CLOSE THIS CASE** and enter judgment accordingly.

IT IS SO ORDERED.

DATED: April 26, 2013

s/ J. PHIL GILBERT
United States District Judge